



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1994

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR94-857

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25106.

The Texas Department of Criminal Justice (the "department") received an open records request for the records of a particular internal affairs investigation. You contend that the requested records are excepted from required public disclosure by, *inter alia*, section 552.108 of the Government Code because "there is currently pending an active criminal investigation about these matters."

Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
[and]
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement

When a governmental body claims section 552.108, this office must determine on a case-by-case basis whether the release of requested information would undermine a legitimate interest in law enforcement or prosecution. Open Records Decision No. 434 (1986). Generally, where documentary evidence contained in a law enforcement agency's files pertains to a pending criminal investigation, the information is protected by section 552.108, even where the same information is also held by a non-law enforcement agency. See Attorney General Opinion MW-575 (1982).

The public prosecutor in any particular case is ordinarily the best judge of whether release of certain records would unduly interfere with law enforcement. Open Records Decision No. 434. Assistant District Attorney Gina M. DeBottis has informed this office that the subject matter of the internal affairs investigation will be presented to the Coryell County Grand Jury in the near future and has asked that these records be withheld from the public at this time. In light of Ms. DeBottis' letter, the department may withhold the requested internal affairs file in its entirety pursuant to section 552.108 until such time that the prosecution of this matter has ended.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 25106

Enclosures: Submitted documents

cc: Mr. Oran McMichael
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